

Understanding The EEOC's New National Enforcement Plan: Changing Priorities, Changing Risks

HR Executive | Moire Morón | August 13, 2026



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Employment risks rarely arrive without warning. More often, they emerge gradually through court decisions, regulatory actions and shifts in enforcement priorities. Individually, those developments may seem incremental, but as a whole, they can significantly alter the risk landscape for employers.

The Equal Employment Opportunity Commission's recent decision to replace the prior administration's enforcement framework with a new National Enforcement Plan (NEP) represents one such shift. While much of the public discussion surrounding the Plan has focused on its approach to diversity, equity, and inclusion (DEI) initiatives, the Commission's substantive priorities extend beyond DEI and include issues such as anti-American national origin discrimination, religious liberty and sex-based rights and protections.

In addition to the Commission's priorities, Chair Andrea Lucas has also identified several substantive "Chair Priorities," which include remedying DEI-related race and sex discrimination, protecting American workers from anti-American national origin discrimination, defending women's rights to single-sex spaces at work, workers' rights to express the binary nature of sex, and protecting workers' religious liberty rights.

The Commission's priorities are not merely theoretical. Since January 2025, the EEOC has pursued a range of enforcement measures, including litigation, negotiated resolutions, technical assistance publications and public outreach initiatives that align with these priorities.

For employers, the significance extends beyond politics and public debate. Enforcement priorities provide insight into the workplace issues most likely to attract regulatory attention, shape future investigations and influence the types of claims employers may face in the upcoming years.

Although the NEP identifies multiple enforcement priorities, DEI-related initiatives have generated a disproportionate share of the attention. This focus is not surprising. The Commission's approach to DEI reflects one of the most significant departures from prior enforcement priorities and aligns closely with several executive orders issued by the current administration. The volume of enforcement activity, public guidance and media attention devoted to this area suggest that DEI-related discrimination will remain a significant focus for the EEOC.

A shift in focus: DEI under the New Enforcement Plan

DEI-related race and sex discrimination is perhaps the most visible priority identified in the Commission's NEP. The Commission has made clear that it intends to scrutinize workplace programs and employment decisions that consider race, sex, or other protected characteristics.

Under prior enforcement frameworks, there was a focus on systemic barriers, workforce demographics and broader patterns of discrimination. The new NEP reflects a different concern.

Rather than focusing primarily on whether employers are doing enough to increase representation, the Commission has signaled a heightened interest in whether DEI-related initiatives themselves create distinctions based on protected characteristics. In practical terms, programs that may have been viewed as evidence of an employer's commitment to inclusion may now be examined to determine whether they provide opportunities, benefits or other advantages that are not equally available to others.

For example, a company might create a leadership development program intended to increase representation among a particular demographic group and limit participation to employees of that group. Under the EEOC's revised enforcement focus, the EEOC could scrutinize whether the eligibility criteria improperly exclude other employees based on protected characteristics, regardless of the program's stated inclusion objectives.

That distinction is important because it changes the questions employers face, and the challenge becomes navigating the tension between those two perspectives.

Textualist interpretation v. historical considerations of Title VII

The debate over DEI enforcement raises a broader question about the purpose of our nation's civil rights laws.

Chair Lucas has described the Commission's new enforcement approach as a return to merit-based and even-handed enforcement of Title VII. Supporters of this view argue that the law's language is straightforward: Employers should not make decisions based on race, color, religion, sex or national origin, regardless of the reason for doing so.

Others see the issue differently.

Critics argue that this interpretation overlooks circumstances that led Congress to pass the Civil Rights Act of 1964 in the first place. The law was enacted during a period when racial discrimination was widespread and often prevented qualified individuals from accessing jobs, education, housing and other opportunities. From this perspective, many DEI initiatives are viewed not as exceptions to civil rights principles, but as efforts to address barriers that have not entirely disappeared.

The disagreement is not simply about workplace programs; it is about how civil rights laws should be applied in today's workforce. Should the focus be solely on whether individuals are treated the same regardless of background, or should employers be permitted to take steps designed to increase opportunities for groups that have historically faced obstacles?

Since January 2025, the EEOC has moved beyond policy statements and into active enforcement, filing lawsuits, pursuing investigations and settling matters involving workplace DEI initiatives. One of the most notable examples is the Commission's lawsuit against Coca-Cola Beverages Northeast, which challenges a women-only networking and professional development event.

Other enforcement priorities

While much of the discussion surrounding the NEP has been focused on DEI-related initiatives, employers should not overlook several other priorities identified by the

Commission. Although these areas have generated fewer headlines, they provide important insight into where the Commission intends to direct enforcement resources over the next several years.

Religious discrimination and religious liberty are also among the Commission's stated priorities. This includes religious accommodation requests, religious expression in the workplace, religious harassment and claims involving employees who believe they were treated unfairly because of sincerely held religious beliefs.

Anti-American national origin discrimination is another priority identified by the Commission. In practical terms, this reflects concerns that American workers may be disadvantaged in favor of foreign workers in certain hiring, recruiting, staffing or employment decisions.

Sex based rights and protections are also among the Commission's stated priorities. In addition to identifying sex-based discrimination as an area of focus, Chair Lucas has emphasized protecting women's rights to single-sex spaces in the workplace and employees' rights to express the binary nature of sex.

Looking ahead

The National Enforcement Plan does not create new laws, nor does it alter the fundamental protections afforded by Title VII and other federal anti-discrimination statutes. Whether discussing DEI initiatives, anti-American national origin discrimination, religious liberty or sex-based rights, a common theme runs throughout the Plan: a shift away from broader discussions of systemic barriers and toward a closer examination of whether a particular employee was treated differently because of a protected characteristic.

For employers, the practical takeaway is not that workplace inclusion efforts should be abandoned or that long-standing policies suddenly became unlawful overnight. Rather, it is a reminder that employment risks are constantly evolving. Programs and practices that may have received little scrutiny in the past can become the subject of increased attention as enforcement priorities change and new legal challenges emerge.

The organizations best positioned to navigate this environment will not be those that react impulsively to headlines or political developments. They will be organizations that take a measured approach, periodically review their workplace policies and programs, remain attentive to changing legal and regulatory expectations and make informed decisions based on compliance obligations and business objectives.